

> ACTIVISTS ALLOW EPA TITLE V GUIDANCE DELAY, ANTICIPATE STATE TAKEOVER

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> Environmentalists are agreeing to waive an upcoming deadline for U.S.  
> EPA to release a guidance document for large animal feedlots to apply  
> for Clean Air Act Title V operating permits, based on their confidence  
> that legislation requiring the state take over the entire Title V  
> program will be signed. While Title V applies statewide, the vast  
> majority of affected farms and ranches are located in the Central  
> Valley.

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> Earthjustice, which represents several environmental groups that sued  
> over the failure of EPA to enforce Title V on California's agriculture  
> industry, is agreeing to a delay in EPA's plan to require certain animal  
> feedlot facilities to apply for permits, from Aug. 1 to Nov. 1. They are  
> confident that a state bill, SB 700 (Sen. Dean Florez, D-Shafter), will  
> be signed by the governor in the interim, giving the state control over  
> the entire permitting program, which also includes "major" sources such  
> as diesel-engine stationary sources. The state law will be more  
> stringent than what would have been required under EPA's plan, sources  
> say. "We brought the litigation because we want the state to remove the  
> agriculture exemption," said an Earthjustice source. "We didn't want EPA  
> to run the program forever."

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> EPA headquarters officials are drafting the guidance document that will  
> be used to determine which confined animal feeding operations (CAFOs)  
> must apply for the Title V permit, according to an EPA Region IX source.  
> Regional officials had expected the document to be completed in early  
> June. The delay is expected to push back the original Aug. 1 application  
> deadline.

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> But the plan contained in SB 700 has already been deemed to be  
> acceptable to EPA, making the permit application deadline issue moot as  
> long as the bill is signed. However, the legislation is currently being  
> amended and is expected to be heard next week by the Assembly Natural  
> Resources Committee. The bill would require agricultural stationary  
> sources to obtain, by Jan. 1, 2005, every operating permit required by  
> the Clean Air Act for stationary sources. The bill is expected to be  
> amended to require the air districts to draft a list of acceptable  
> measures to reduce air pollution from the permitted sources.

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> If the bill is signed later this year, it would take effect on Jan. 1,  
> 2004, and the state would have one year after that to put the program in  
> place and begin issuing permits, according to the Earthjustice source.  
> "So a four-month delay in the application deadline is not that big of a  
> deal."

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> Earlier this year, the environmentalists refused to budge on a separate  
> mid-May deadline for "major" agricultural sources of pollution not  
> related to animal feedlots -- specifically defined as those facilities  
> with diesel irrigation pumps that emit more than 25 tons per year (tpy)  
> -- to apply for permits under Title V. But Earthjustice sued EPA in late  
> May, charging that it violated the law by allowing the farms and ranches  
> in that category to estimate their own emissions to decide whether they  
> are subject to the permit, rather than calculating their "potential to  
> emit." That legal action is pending in the U.S. Ninth Circuit Court of  
> Appeals. Environmentalists were dismayed to learn that only 26 "major  
> source" facilities applied for the Title V permits, and EPA deemed only  
> 18 as being required to obtain the permits. One of the reasons the  
> numbers are so low is that EPA has proposed to reclassify many diesel  
> irrigation pumps as mobile sources, and therefore not subject to Title V  
> permitting. Environmentalists are challenging that proposal through the  
> regulatory development process.

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> Under the Clean Air Act, major sources are defined based on the  
> attainment status of the district where they are located. In the San

> Joaquin Valley, which is classified as a severe nonattainment area for  
> ozone, the threshold for major sources is 25 tpy for emissions of  
> nitrogen oxide or volatile organic compounds (VOCs). For serious  
> nonattainment areas, the threshold is 50 tpy; in moderate areas it is  
> 100 tpy; and in attainment areas the threshold is 250 tpy. The Title V  
> permitting dispute has focused on the Central Valley because it has the  
> most CAFOs in the state, which emit large amounts of VOCs.  
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> Title V permitting does not limit emissions specifically, but it  
> requires facilities to report pollution data to local air districts,  
> which could eventually require the facilities to install pollution  
> control equipment as well as require new facilities to provide more  
> pollution offsets.  
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> Environmentalists acknowledge that the requirements under SB 700 will  
> not immediately reduce pollution from farms and ranches in the state,  
> but believe the implementation of Title V is a huge victory. "The  
> agriculture industry is extremely powerful in Sacramento and Washington,  
> D.C., and they've had a completely free pass," said the Earthjustice  
> source. "This is the first time they will have to apply for permits, and  
> yes, there are not going to be strict limitations immediately, but it  
> will be a process by which the two sides will take information and start  
> looking at available technologies. And, slowly, better technologies will  
> be implemented."  
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> Being subject to Title V permitting also opens agricultural facilities  
> and local air districts to citizen suits for failure to comply. The  
> permits "provide the blueprint for enforcement, and we'll know what the  
> permit requirements are," the source added.  
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